

CLAUSE I-55 – FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE OVER SUBCONTRACTOR (August 2002)

- (a) For purposes of this clause, a foreign interest is defined as any of the following:
 - (1) A foreign government or foreign government agency;
 - (2) Any form of business enterprise organized under the laws of any country other than the United States or its possessions;
 - (3) Any form of business enterprise organized or incorporated under the laws of the U.S., or a State or other jurisdiction within the U.S., which is owned, controlled, or influenced by a foreign government, agency, firm, corporation or person; or
 - (4) Any person who is not a U.S. citizen.
- (b) Foreign ownership, control, or influence (FOCI) means the situation where the degree of ownership, control, or influence over a subcontractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information, special nuclear material as defined in 10 CFR Part 710, may result.
- (c) For purposes of this clause, "subcontractor" means any subcontractor at any tier and the term "Business Services Director" shall mean any authorized representative of the Business Services Director. When this clause is included in a subcontract, the term "contractor" shall mean subcontractor and the term "contract" shall mean subcontract.
- (d) The Subcontractor shall immediately provide the Business Services Director written notice of any changes in the extent and nature of FOCI over the Subcontractor that would affect the answers to the questions presented in DEAR 952.204-73. Further, notice of changes in ownership or control, which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice, shall also be furnished concurrently to the Business Services Director.
- (e) In those cases where a subcontractor has changes involving FOCI, the DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the Business Services Director shall consider proposals made by the Subcontractor to avoid or mitigate foreign influences.
- (f) If the Business Services Director at any time determines that the Subcontractor is, or is potentially, subject to FOCI, the Subcontractor shall comply with such instructions as the Business Services Director shall provide in writing to safeguard any classified information or significant quantity of special nuclear material.
- (g) The Subcontractor agrees to insert terms that conform substantially to the language of this clause including this paragraph (g) in all subcontracts under this subcontract that will require access to classified information or a significant quantity of special nuclear material. Additionally, the Subcontractor shall require such subcontractors to submit a completed certification required in DEAR 952.204-73 prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Business Services Director.
- (h) Information submitted by the Subcontractor or any affected subcontractor as required pursuant to this clause shall be treated by DOE to the extent permitted by law, as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.
- (i) The requirements of this clause are in addition to the requirement that a subcontractor obtain and retain the security clearances required by the subcontract. This clause shall not operate as a limitation on DOE's rights, including its rights to terminate this subcontract.
- (j) The Business Services Director may terminate this subcontract for default either if the Subcontractor fails to meet obligations imposed by this clause, e.g., provide the information required by this clause, comply with the Business Services Director's instructions about safeguarding classified information, or make this clause applicable to subcontractors, or if, in the Business Services Director's judgment, the Subcontractor creates an FOCI situation in order to avoid performance or a termination for default. The Business Services Director may terminate this subcontract for convenience if the Subcontractor becomes subject to FOCI and for reasons other than avoidance of performance of the subcontract, cannot, or chooses not to, avoid or mitigate the FOCI problem.